

REMARKS

Claims 1-14 were pending in the application.

Claim 1 is amended to specify ranges for ingredients b and c disclosed on page 2 and amount ranges for dye compounds disclosed on pages 4 and 8 of the specification as originally filed. Claims 2, 3, and 7-9 are canceled. New claim 15 reciting the dye carrier composition using "consisting of" language is added.

No new matter is added.

Claims Rejections 35 U.S.C. 103

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al. (US 2002/0046431 A1) in view of Jacquet et al. (US 4,381,919).

I. Applicant argues that claim 15 is patentable over Laurent in view of Jacquet because the optimization asserted as obvious in the rejection could not have led to the presently claimed invention.

Claim 15 recites a dye carrier composition using "consisting of" language and therefore excludes the cationic amphiphilic polymer, which is a required component of the compositions taught by Laurent et al. One of ordinary skill in the art would not have been motivated to remove the required polymer from the Laurent composition in view of Jacquet because doing so would have rendered the Laurent composition unsuitable for its intended purpose.

Claim 15 recites a dye carrier composition using "consisting of" language and therefore excludes the quaternized polymer, which is a required component of the compositions taught by Jacquet et al. One of ordinary skill in the art would not have

been motivated to remove the required polymer from the Jacquet composition in view of Laurent because doing so would have rendered the Laurent composition unsuitable for its intended purpose.

II. Applicant argues that claims 1 and 15 are patentable over Laurent in view of Jacquet because the optimization asserted as obvious in the rejection could not have led to the presently claimed invention.

Initially, Applicant acknowledges the citation of case law regarding the optimization of result effective variables. The rejection makes no direct connection between the cited case law and the present rejection. Applicant respectfully requests that the relevance of the cited case law to the rejected claims be articulated so that Applicant may prepare a response that is specific to the Examiner's interpretation of the present claims.

Applicant appreciates that optimization using routine experimentation or undue experimentation alone to arrive at the presently claimed invention would have been obvious to one of ordinary skill in the art. The Examiner asserts that that the presently claimed invention results from "the optimization of result effective variable" "obtained through routine experimentation" and that Applicant has not shown on record the criticality of the claimed ratio in the claimed composition.

Lacresous luster-imparting agents are well known in the art and it would have been obvious to use such agents to make a hair colorant providing a nacreous luster. It would also have been obvious to optimize the amounts of lacresous luster-imparting agents to obtain the most lustrous effects in colored hair.

Applicant respectfully submits that it would not have been obvious to optimize combinations of compounds known NOT to be lacresous luster-imparting agents for the ability of the combinations to produce lustrous effects in colored hair. Applicant argues that the optimization of combinations of ingredients for an effect not previously known

for the combinations or the individual ingredients cannot be prima facie obvious unless a specific reason is supported in the cited prior art or is common knowledge in the art. While the optimization asserted as obvious is possible (i.e. could have been performed at the time the invention was made), there is no evidence that the optimization would have been performed because no specific motivation for the optimization has been articulated. Should the rejection be maintained, Applicant respectfully requests that the Examiner articulate what would have motivated one of ordinary skill in the art to optimize ingredients a-c recited in claims 1 and 15 for the ability to provide colored hair with a lacreous luster.

Conclusion

The application, in its amended state, is believed to be in condition for allowance. Action to this end is courteously solicited. Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully Submitted,
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